

# Australian High Court permits bogus postal vote on marriage equality

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In what amounts to a highly political verdict, the Australian High Court's seven judges yesterday ruled that the Turnbull government can proceed, via executive decrees, with a sham postal "survey" on same-sex marriage.

The decision by the country's supreme court averted an immediate political crisis for the unstable Liberal-National Coalition government, which is wracked by divisions over marriage equality. The ruling also gave the go-ahead for an unprecedented plebiscite on what is an elementary legal and democratic right, that is, to marry.

The unanimous court verdict came less than 24 hours after the court completed two days of hearings on the case, allowing the postal vote to start in just five days' time. The Australian Bureau of Statistics (ABS) will now begin mailing ballots to voters next Tuesday, asking them to say "yes" or "no" to amending the Marriage Act to allow same-sex couples to marry. Voters will have until November 7 to return their envelopes.

Never before has a basic democratic right been made conditional on what is, in effect, a voluntary opinion poll. Moreover, the government has refused to be bound by the result if it is a "yes" majority.

While religious-based opponents of marriage equality are being mobilised to vote "no," many young people, in particular, are unlikely to participate, either because they are not on the electoral rolls, have changed address or are unfamiliar with the postal system.

Many working-class voters may decline to take part simply due to the vast social distress they confront. The entire exercise is being backed by corporate chiefs, media magnates and the political establishment as a distraction from the pressing issues facing millions of people—the rising danger of war, falling wages and living standards, soaring household costs and the erosion of democratic rights, including the right to citizenship.

What is being presented as a potential great leap

forward for equality, touted by numerous company chief executives, is a fraud on every level. Even if the survey produces a "yes" majority and the government then permitted parliament to debate a private members' bill on gay marriage, any legislation would contain discriminatory provisions against same-sex couples.

An elated Prime Minister Malcolm Turnbull quickly welcomed the ruling, telling the House of Representatives: "We encourage every Australian to vote in this survey, to have their say."

Far from allowing people to "have their say," the postal ballot was concocted by the cabinet's leading opponents of marriage equality—Immigration Minister Peter Dutton and Finance Minister Mathias Cormann. It is a blatant bid to further delay the long-overdue recognition of the right of all couples to marry, regardless of gender, and stymie the popular support for marriage equality.

The ballot is designed to mobilise the homophobic and religious fundamentalist social base on which the conservative factions rest. Bigoted advertisements and other campaign materials are already demonising same-sex parents and accusing them of harming their children.

The judges are yet to publish their reasons. Regardless of the legal details, however, their ruling is a green light for a vast expansion of executive power. They rubberstamped spending \$122 million on the postal vote, despite parliament voting twice to reject a plebiscite on gay marriage.

That precedent can be used more broadly to permit governments to override parliamentary opposition, giving them the power to spend millions of dollars, on military or intelligence operations, for example, without legislative approval.

As if to punish challenges to executive decrees, the judges not only dismissed two legal and constitutional law suits objecting to the ballot. They also awarded costs—which will run into many thousands of

dollars—against those who brought the cases.

If the court had struck down the postal vote, divisions within the Coalition were set to erupt. Socially conservative elements grouped around former Prime Minister Tony Abbott and the rural-based National Party vehemently oppose any move for a parliamentary vote on the marriage issue, and have threatened to try to oust Turnbull if he allowed that to happen.

Despite yesterday's ruling, the unstable one-seat majority government's future is still hanging in the balance. Another High Court case in mid-October will determine whether to disqualify Deputy Prime Minister Barnaby Joyce and six other members of parliament for allegedly holding, or being entitled to hold, dual citizenship of another country.

The seven MPs have been referred to the court as part of a nationalist witch-hunt to demand undivided loyalty within the political establishment amid mounting war tensions provoked by the US and its closest allies, including Australia, against North Korea, China and Russia. The disqualification case could be used as a vehicle for removing the fragile government to try to make way for a stronger one.

Yesterday's court ruling has far-reaching implications for basic legal and democratic rights.

On behalf of the government, Solicitor-General Stephen Donaghue told the court that none of the plaintiffs—members of parliament, same-sex parents and gay and lesbian organisations—had any right to mount the case, insisting they lacked “standing” to challenge the ballot. By implication, no one had the right to question the legality of the government's actions.

The challengers said the expenditure was unconstitutional, because the Constitution supposedly enshrines the principle of parliamentary control over spending. Section 83 states: “No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.”

To evade this rule, the government invoked a power in the annual budget Appropriation Act to spend money for “urgent” and “unforeseen” purposes. Solicitor-General Donaghue declared that natural disasters and military interventions were not the only events that met the “urgent” criteria. Government policy could be a matter of urgency, he insisted.

In fact, the government was planning to hold the survey even if the court declared it unlawfully funded. A Senate inquiry was told this week that the ABS and the Finance Department began contingency planning last week, based

on financing the survey by other means. The ABS had already spent \$14.1 million. In other words, the government essentially pre-empted the court ruling.

This “survey” will not produce marriage equality. The bill proposed by Liberal Party backbenchers would allow ministers of religion, military chaplains and “independent religious celebrants” to refuse to marry couples on grounds of sex, sexuality and family status. Other entities could legally refuse to provide facilities, goods or services.

Today's *Australian* editorial, while hailing the High Court for supposedly “keeping faith with most Australians' wishes,” demanded that the restrictions go further, giving church schools, universities, hospitals and welfare agencies the right to discriminate against same-sex couples and advocates of marriage equality.

Hypocrisy abounds. The last Labor government, with Labor leader Bill Shorten playing a key role, ensured the defeat of the previous parliamentary vote on marriage equality in 2012. Now Labor and the Greens, who propped up that government, are imploring voters not to boycott the survey. Thus they are trying to give it political legitimacy and channel mounting popular discontent back into the discredited parliamentary framework.

Working people and youth should boycott this sham. Its chief political purpose is to hold together a government and an entire parliamentary set-up that is preparing to join a US-led war against North Korea and China, and deepen the assault on the jobs, conditions, social services and basic rights of the working class.

The fight for genuine marriage equality, like all democratic rights, can be taken forward only through the independent political mobilisation of the working class on the basis of a socialist perspective. This requires a mass movement against the ruling elite and its political servants, who are increasingly violating basic legal and democratic rights on every front as they prepare to confront and attempt to suppress growing social unrest.



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